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EXAMINER

GODENSCHWAGER, PETER F

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed September 11, 2008 have been fully considered but they are not persuasive.

Applicant argues that the data in Table 17 shows unexpectedly better results for examples 9, 2, and 7 compared to AEROSIL R2800. It is noted that the sieve residues for examples 9, 2, and 7 of the invention are lower after 5 minutes of mixing compared to AEROSIL R2800 (25.5%, 11.0%, and 11.0% compared to 29.0%). However, as noted in the Advisory Action mailed August 13, 2008, the silica of AEROSIL R2800 shows a lower silica residue (2.5%) after 60 minutes of mixing compared to examples 9, 2, and 7 (13.0%, 3.0%, and 5.0% respectively). There is nothing in the instant claims to limit the mixing time to 5 minutes, as such, the instant claims are not commensurate in scope with the specific data of Table 17. Furthermore, as previously stated in the prior Advisory Action, the scope of the claim is larger than the selected examples, as the examples include further variables such as milling after structure modification (Table 11). It is also unclear as to exactly which silicas Examples 9, 2, and 7 refer. There appears to be an Example 2 listed in Tables 11 and 12 on Pg. 29. However, no reference to Examples 7 and 9 were found. Furthermore, if it is assumed that Examples 7 and 9 refer to *silicas* 7 and 9, it is not clear which silicas 7 and 9 they would be referring to, as different silicas 7 and 9 are listed in Table 5 (Pg. 14) and Table 7 (Pg. 19).

Applicant's argue further that improvements in fluidisability and resistance to caking (Table 13, Pg. 31 and Table 14, Pg. 32 respectively) are not foreshadowed by Hartmann. However, there is no comparison of the examples of the present invention with the silicas of Hartmann (AEROSIL R2800) in Tables 13 or 14. The data in Tables

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13 and 14 show comparisons only to non-structurally modified silica and silica that has varying degrees of structural modification which is not relevant to the combination of Hartmann and Menon.

Applicant argues that one of ordinary skill in the art would not use the silanes of Menon as Menon teaches that they require purification. However, as stated in the previous Advisory Action, Menon et al. teaches the advantages of using MTCS or DMDCS as opposed to single site reactive silanes, such as a lower cost, and the availability of two or three reactive sites as opposed to single site reactive silicas (3:37-53) (i.e. HMDS of Hartmann et al.) which would lead to stronger, more stable, capping of silicas. In addition, the ability of using MTCS from waste streams for making silicone (waste streams that would not contain HMDS) (4:1-8) would lead to an economic advantage as the MTCS would not have to be purchased separately, and would also lead to a more environmentally beneficial process (4:1-8).

Regarding the combination of Hartmann et al. and Koehlert et al., the broad teaching of Koehlert et al. that surface modified silicas are useful as free flow agents in herbicides and insecticides (agricultural chemicals) and fire extinguishing powders (1:47-61), and the fact that Hartmann et al. is concerned with surface modified silicas useful as free flow agents, especially in fire extinguishing powders (1:40-60) would suggest to one of ordinary skill in the art that the silicas of Hartmann et al. in view of Menon et al. would also be useful in herbicides and insecticides (agricultural chemicals). Applicant's argue that the previous Advisory Action suggests the cited references contain a broad teaching as to the "suitability of silane surface treated silicas for any and all purposes". However, the previous Advisory Action only cites Koelert et al. for its broad teaching

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that surface modified silicas are useful as free flow agents in herbicides and insecticides (see also above) not any and all purposes.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Mark Eashoo, Ph.D./
Supervisory Patent Examiner, Art Unit 1796
19-Sep-08

/P. F. G./
Examiner, Art Unit 1796
September 15, 2008